

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 17, 2004

IN RE:

PETITION FOR ARBITRATION OF CELLCO PARTNERSHIP
D/B/A VERIZON WIRELESS

PETITION FOR ARBITRATION OF BELL SOUTH MOBILITY
LLC; BELL SOUTH PERSONAL COMMUNICATIONS, LLC;
CHATTANOOGA MSA LIMITED PARTNERSHIP;
COLLECTIVELY D/B/A CINGULAR WIRELESS

PETITION FOR ARBITRATION OF AT&T WIRELESS PCS, LLC
D/B/A AT&T WIRELESS

PETITION FOR ARBITRATION OF T-MOBILE USA, INC.

PETITION FOR ARBITRATION OF SPRINT SPECTRUM L.P.
D/B/A SPRINT PCS

DOCKET NO.
03-00585

ORDER GRANTING MOTION TO COMPEL

This matter is before the Pre-Arbitration Officer pursuant to the *CMRS/Rural Coalition Joint Statement Re Interrogatories Subject to the CMRS Providers' May 13, 2004 Motion to Compel* ("Joint Statement") filed with the Tennessee Regulatory Authority ("TRA") on June 11, 2004. In the *Joint Statement*, the CMRS Providers withdraw the *Motion to Compel* ("Motion") with respect to Interrogatory Numbers 5, 6, 8, 18, 19, 26, 27, and 36 and state that the disputes with respect to Interrogatory Numbers 1, 3, 4, 9-12, 24, 25, 28, 29, and 37 have yet to be resolved, as discussed in the *Joint Statement*, and now require TRA intervention.

Legal Framework

The process of discovery in contested cases before the TRA is governed by the Tennessee Rules of Civil Procedure.¹ According to Rule 26.02,

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

Interrogatory Nos. 1, 3, 4

Question: **No. 1** - Excluding the CMRS Providers, please identify each Telecommunications carrier to whom you have originated any Telecommunications Traffic or from whom you have terminated any Telecommunications Traffic either directly or indirectly during the past 12 months pursuant to a written agreement. For each Telecommunications carrier identified in response to Interrogatory 1 with whom a written agreement exists and was filed with the TRA, please identify the Docket No. and sufficient additional detail to permit a copy of such agreement, including any and all amendments thereto, to be requested and obtained from the TRA.

No. 3 - Excluding the CMRS Providers, please identify each Telecommunications carrier to whom you have originated any Telecommunications Traffic or from whom you have terminated any Telecommunications Traffic either directly or indirectly during the past 12 months without the benefit of a written agreement.

No. 4 - For each Telecommunications carrier identified in response to Interrogatory 3, please identify whether the traffic is being originated or terminated based upon agreed terms and, if so, please identify any agreed upon

¹ See Tenn Comp R & Regs 1220-1-2-.11(1).

rate for the termination and/or transport of such traffic, traffic ratio(s) and (if the Telecommunications carrier is a CMRS carrier) interMTA factor(s).

Answer: With respect to “Telecommunications Traffic” exchanged between a Rural Coalition Member and entities that offer CMRS service (other than the CMRS Providers party to this proceeding), the Rural Coalition Members generally have no awareness of the identity of any CMRS carrier that terminates traffic originated by a customer using the network of a Rural Coalition Member to originate a call.

In addition, two members of the Rural Coalition, the Dekalb Telephone Cooperative, Inc. and the Yorkville Telephone Cooperative, have each established affiliated facilities arrangements with their respective CMRS affiliates. These two members of the Coalition are cooperatives, and, it is our opinion that therefore these arrangements are not discoverable.²

The CMRS Providers contend that these answers are non-responsive – asking that the Coalition state expressly if the identity of a specific CMRS carrier is not known and contending that cooperatives are not exempt from discovery in this Docket.

With respect to the identity of specific CMRS carriers, the Coalition has answered that its members do not generally know this information. While not in the precise form requested by the CMRS Providers, the Coalition has, nonetheless, provided an adequate response to this question.

With respect to cooperatives being subject to discovery, the Coalition has provided no support for its assertion that the requested information is not discoverable. Moreover, Dekalb Telephone Cooperative, Inc. and the Yorkville Telephone Cooperative are parties to this arbitration and are, therefore, subject to discovery to the same extent as any other party.

Interrogatory Nos. 9 - 12

Question: No. 9 - What are the respective rates that each Respondent proposes for transport and termination of (a) Telecommunications Traffic exchanged on a direct basis with the CMRS Providers and (b) Telecommunications Traffic exchanged on an indirect basis with the CMRS Providers?

² This answer was provided in response to Interrogatory No. 1 but is substantially the same as the answer provided to Interrogatory Nos 3 and 4

No. 10 - For each rate provided in response to Interrogatory 8 (regarding rates proposed for the transportation and termination of Telecommunications Traffic exchanged with the CMRS Providers), please describe how the rate, and each of its elements, is calculated. Please include in your answer identification of each distinct network function that you contend is required to provide each termination arrangement.

No. 11 - For each rate provided in response to Interrogatory 8 (regarding rates proposed for the transportation and termination of Telecommunications Traffic exchanged with the CMRS Providers), please identify and provide copies of all cost models, cost inputs, and cost assumptions relating to the rate, projected traffic demand and growth assumptions, including all supporting documentation of any network functionality that you use to terminate a call originated by the CMRS Providers. Please include in your response functioning electronic copies of the cost models, populated with the inputs and assumptions used by Respondent, in a format that allows the user to change inputs and assumptions and recalculate results.

No. 12 - Have any of the rates that you propose for transport and termination of Telecommunications Traffic exchanged with the CMRS Providers been approved by the TRA? If so, please identify the decision and provide a copy.

Answer: As the Rural Coalition discussed, the Rural Coalition members intended to set forth rate proposals in their direct testimony, and they have done so. In the course of the negotiations that preceded this arbitration, the Coalition made a rate proposal in the context of an offer to resolve this issue. The Coalition provided the CMRS Providers with the cost basis for the proposal.

The CMRS Providers contend that the rates proposed by the Coalition do not comply with the requirements of 47 C.F.R. § 51.705 - specifically, the rates are not based on forward looking economic costs and have not been proposed with any supporting documentation. The CMRS Providers suggest that such information, or the lack thereof, should be made available now through discovery rather than on the eve of the hearing through pre-filed testimony. To remedy this alleged deficiency, the CMRS Providers request that the Coalition Members be required to provide either of the following: (1) a proposed appropriate forward looking cost-based rate and all supporting cost information that it intends to rely upon at the arbitration hearing in this matter, or be foreclosed from offering any rate evidence at such hearing; or (2)

state that it does not have a proposed forward looking cost-based rate or supporting information for such rate and, therefore, will not be presenting rate evidence at the arbitration in this matter.

The CMRS Providers have asked for rate proposals with supporting documentation. Whatever information the Coalition Members may have provided to date is, apparently, not sufficiently responsive to the Interrogatories and, therefore, additional and/or different information is being requested. In opposing this request, the Coalition Members have utilized none of the objections provided for in Tenn. R. Civ. Proc. 26.02 and have provided no basis for refusal other than that the information will or has appeared in direct testimony. While this assertion may be true, the CMRS Providers still have the right to receive through discovery the information specifically sought in their interrogatories from the Members of the Coalition.

Interrogatory No. 24

Question: Is Respondent currently sending any Telecommunications Traffic originated by its landline customers to any of the CMRS Providers through trunk groups which connect Respondent to BellSouth tandem facilities? If so, please state the monthly volume of that Telecommunications traffic.

Answer: (In relevant part) With respect to calls that are directed to NPA-NXXs that appear to be terminating points within the LATA in which the call originates, the network facility to which the call is switched may be that of BellSouth.

The CMRS Providers object to this answer since the Coalition provided a “maybe” to a “yes or no” question. Because the Coalition has not alleged that it is unable to provide a definitive answer to this question, it shall now do so.

Interrogatory No. 25

Question: If Respondent is currently sending any Telecommunications Traffic originated by its landline customers to any of the CMRS Providers through trunk groups which connect Respondent to BellSouth’s tandem facilities, to what extent is that traffic dialed by Respondent’s landline customers on a non-toll, 7 or 10 digit basis?

Answer: Rural Coalition members may send traffic to CMRS Providers on a “reverse toll basis.” Where such agreements exist, the Coalition Members understand these arrangements to be confidential between them and the CMRS Provider. In the event that any other traffic is originated by a customer of a Rural Coalition Member and completed to a CMRS Provider on a 7 digit or 10 digit basis in the absence of an agreement, it is likely that the Rural Coalition Member has relied on information inserted by another party into the Local Exchange Routing Guide that incorrectly indicated that the dialed number will be terminated physically to an end user within the originating carrier’s local calling area.

The CMRS Providers assert their right to know which Coalition Members are knowingly sending traffic to a BellSouth tandem. With a protective order in place in this arbitration to protect from inappropriate disclosure of any confidential information provided, the Coalition has not alleged any reason for not divulging this information as requested.

Interrogatory Nos. 28 and 29

Question: **No. 28** - Please identify whether or not Respondent provides calling from its landlines to CMRS NPA-NXXs rated in rate centers that are within Respondent’s local calling area on a non-toll basis. Please describe how such calls are routed.

No. 29 - Please identify whether or not Respondent provides calling from its landlines to CMRS NPA-NXXs rated in rate centers that are Metropolitan Area Calling (“MAC”) plan or Extended Area Service (“EAS”) rate centers on a non-toll basis. Please describe how such calls are routed.

Answer: In the event that any other traffic is originated by a customer of a Rural Coalition Member and completed to a customer of a telecommunications carrier on a 7 digit basis in the absence of an agreement, it is likely that the Rural Coalition Member has relied on information inserted by another party into the Local Exchange Routing Guide that indicates that the dialed number will be terminated physically to an end user within the originating carrier’s local calling area.

The CMRS Providers object to this response because the Coalition has not stated, as requested, whether or not such local calling actually occurs but only what might happen if such calling should occur. This answer is, again, non-responsive since the question calls for a definitive “yes or no” answer.³

³ The discussion regarding Interrogatory No 28 was deemed by the Parties to also be pertinent to No 29

Interrogatory No. 37

Question: Please provide copies of each Coalition member's most recent two audited financial statements containing Part 32 – Uniform System of Accounts level detail.⁴

The Coalition stated that it would confer regarding its response to this request but has offered no objection to providing the requested information.

IT IS THEREFORE ORDERED THAT:

1. The *Motion to Compel* is granted in part with respect to Interrogatory Numbers 1, 3, and 4 as indicated above.
2. The *Motion to Compel* is granted in full with respect to Interrogatory Numbers 9 – 12, 24, 25, 28, 29, and 37 as indicated above.
3. The Rural Coalition shall respond to the Interrogatories as indicated above by no later than June 23, 2004.
4. The Rural Coalition shall also provide the agreed upon updates to Interrogatory Numbers 2, 7, 30, 31, and 38 by no later than June 23, 2004.
5. The *Motion to Compel* with respect to Interrogatory Numbers 5, 6, 8, 18, 19, 26, 27, and 36 is moot.



Kim Beals, Counsel
as Pre-Arbitration Officer

⁴ As originally crafted, this Interrogatory read as follows Provide copies of your audited financial statements for 2000, 2001, 2002 and 2003